

DEPARTMENT OF STATE REVENUE

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LETTER OF FINDINGS NUMBER: 97-0390 MVE

MOTOR VEHICLE EXCISE TAX

FOR THE PERIODS 8/95 THROUGH 10/96 AND 8/95 THROUGH 10/97

NOTICE: Under IC 422-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUES

I. Motor Vehicle Excise Tax - Imposition

Authority: IC 6-6-5-1; IC 6-6-5-2; IC 9-13-2-78

The taxpayer protests the imposition of motor vehicle excise tax on a 1992 Ford automobile and van.

II. Tax Administration - Penalty

Authority: IC 6-8.1-10-2.1; 45 IAC 15-11-1 & 2

The taxpayer protests the imposition of the ten percent (10%) negligence penalty.

STATEMENT OF FACTS

The taxpayer, an employee of the U.S. Department of Agriculture, moved to Indiana in August of 1995 as a result of a change in his duty station. Upon moving to Indiana, the taxpayer tried to register his vehicles (1992 Ford, and 1992 Ford Van) but was required to have the vehicle identification numbers verified. According to the taxpayer, since the vehicles were not in Indiana at that time, the taxpayer could not register the vehicles.

The taxpayer states that during the period in question, he was a graduate student at the University of Illinois. He also stated that he had a home located in Champaign, Illinois and an apartment in Urbana, Illinois. The taxpayer stated that he commuted back and forth from Indiana to Illinois for school purposes. The taxpayer did not have a regular schedule of classes to attend, because he was working on his masters thesis. The taxpayer argues that he drove his government vehicle on a regular basis and drove the 1992 passenger vehicle intermittently. The taxpayer stated that his wife drove the 1992 Ford van and lived in Indiana during the time periods in question.

Additional facts will be presented as needed in the discussion sections that follow.

I. Motor Vehicle Excise Tax - Imposition

DISCUSSION

The taxpayer protests the imposition of motor vehicle excise tax on his 1992 Ford van and 1992 passenger vehicle. In support of his protest the taxpayer contends that the two vehicles were not in Indiana until 1/29/96 and 1/30/97 respectively.

Indiana motor vehicle excise tax is imposed on vehicles that are required to be registered in Indiana. The imposition of the motor vehicle excise tax is provided at IC 6-6-5-2(a) which provides the following:

There is imposed an annual license excise tax upon vehicles, which tax shall be in lieu of the ad valorem property tax levied for state or local purposes, but in addition to any registration fees imposed on such vehicles.

The term vehicle is defined under IC 6-6-5-1(a) which provides the following:

As used in this chapter, "vehicle" means a vehicle subject to annual registration as a condition of its operation on the public highways pursuant to the motor vehicle registration laws of the state.

Indiana Code section 9-18-2-1 requires that any person who is defined as an Indiana resident and who operates a vehicle in the state is required to register the vehicle in Indiana within sixty (60) days of becoming an Indiana resident. The person must register and title all vehicles owned by that person that are subject to the motor vehicle excise tax under IC 6-6-5 and that will be operated in Indiana.

IC 9-13-2-78 provides in pertinent part:

Indiana resident refers to a person who is one of the following:

(1) A person who has been living in Indiana for at least one hundred eighty-three (183) days during a calendar year and who has a legal residence in another state. However, the term does not include a person who has been living in Indiana for the following purposes:

(A) Attending an institution of higher education....

(2) A person who is living in Indiana if the person has no other legal residence.

(3) A person who is registered to vote in Indiana.

(4) A person who has a child enrolled in an elementary or secondary school located in Indiana.

(5) A person who has more than one-half (½) of the person's gross income... derived from sources

in Indiana...

It appears from the facts that the taxpayer moved to Indiana in August of 1995. The taxpayer's 1995 Individual income tax returns state that the taxpayer was a resident of Illinois from January 1, 1995 until July 31, 1995. The taxpayer then became a resident of Indiana from August 1, 1995 until December 31, 1995. However, the taxpayer stated on his 1995 individual tax return that he and his wife's Indiana county of residence as of January 1, 1995 was Madison. The taxpayer's county of principal employment was Madison, and his wife's principal county of employment was Hancock. On the back of the return, as of December 31, 1995, the taxpayer stated that he and his spouse owned or leased one (1) vehicle and that the vehicle was registered with the Indiana Bureau of Motor Vehicles. The Department's records indicate that the 1992 Ford van was not registered in Indiana until January of 1996 and the 1992 passenger vehicle was not registered until January of 1997. Therefore, the Department has determined that the taxpayer does owe the motor vehicle excise tax beginning in August of 1995.

FINDING

The taxpayer's protest is partially sustained and partially denied. The taxpayer is responsible for motor vehicle excise tax on the 1992 Ford van, however, the assessment shall be adjusted to reflect motor vehicle excise tax from August of 1995 to January 29, 1996 when the vehicle was properly registered in Indiana. As for the 1992 Ford automobile the taxpayer is also responsible for the motor vehicle excise tax assessed, however the assessment will be adjusted to reflect motor vehicle excise tax from August 1995 to January 30, 1997, when the vehicle was properly registered in Indiana.

II. Tax Administration - Penalty

DISCUSSION

The taxpayer protests the Department's imposition of the ten percent (10%) penalty assessment. Indiana Code section 6-8.1-10-2.1 requires a ten percent (10%) penalty to be imposed if the tax deficiency is due to the negligence of the taxpayer. Department regulation 45 IAC 15-11-2 provides guidance in determining if the taxpayer was negligent in nature.

Departmental regulation 45 IAC 15-11-1(b) defines negligence as "the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer." Negligence is also to be determined on a case-by-case basis according to the facts and circumstances of each taxpayer.

Subsection (d) of IC 68.1-10-2.1 allows the penalty to be waived upon a showing that the failure to pay the deficiency was due to reasonable cause. Departmental regulation 45 IAC 15-11-2(c) requires that in order to establish reasonable cause, the taxpayer must show that it "exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed.... "

In this instance, the taxpayer has not shown reasonable cause. The taxpayer has not provided to the Department's satisfaction, sufficient justification for interpreting the code as it did.

FINDING

The taxpayer's protest is denied. The taxpayer has not provided to the Department's satisfaction, sufficient justification for interpreting the code as it did.